

B.P., on behalf of minor child, B.P.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	
LENAPE REGIONAL HIGH SCHOOL	:	DECISION
DISTRICT, BURLINGTON COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning parent challenged the Board’s refusal to readmit B.P. to the Sequoia Transitional High School (Sequoia). Petitioner, however, had signed an agreement (which she sought to nullify) withdrawing B.P. from the District. B.P. had been suspended after a third violation of the District’s drug policy.

The ALJ found no evidence of fraud on the part of the Board, nor “clear and convincing proof” of other compelling circumstances to vacate the settlement agreement. The ALJ concluded that the Board’s decision not to agree to petitioner’s “request that B.P. be permitted to return to school” was not arbitrary, capricious or unreasonable. The ALJ ordered the petition dismissed.

The Deputy Commissioner found that as long as B.P. meets the admission requirements of *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:28-2.4, he is legally entitled to attend school in the Board’s District. The Commissioner lacks subject matter jurisdiction to resolve disputes over the interpretation and enforcement of contracts; thus, he declined to rule on the enforceability of the withdrawal agreement. The Deputy Commissioner directed the Board to readmit B.P. and to make arrangements to assess his educational needs and to identify an appropriate educational program for him. If the Board maintains that the within withdrawal agreement is binding and the Board is not required to educate B.P., then it may seek enforcement of that agreement in the appropriate forum, while continuing to provide an appropriate educational program for B.P.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 2782-02
AGENCY DKT. NO. 133-4/02

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board’s exceptions were untimely filed pursuant to *N.J.A.C.* 1:1-18.4(a), in that the Initial Decision was mailed to the parties on August 22, 2002 and the exceptions were filed on September 5, 2002, outside the 13-day period prescribed by regulation. Accordingly, the exceptions are not considered in the determination of this matter.

Upon careful and independent review of the record in this matter, the Deputy Commissioner, to whom this matter has been delegated for review, in accordance with *N.J.S.A.* 18A:4-33, modifies the Initial Decision as set forth herein, initially concurring with the Administrative Law Judge that this matter was timely filed pursuant to *N.J.A.C.* 6A:3-1.3(d).

The parties do not dispute that petitioner and B.P., her minor son, reside within the Lenape Regional High School District. (Petition of Appeal at 1) Petitioner seeks reinstatement of B.P. into the Sequoia Transitional Program, an alternative high school within the Board’s District. (*Id.* at 2, 3) In lieu of an Answer to the Petition of Appeal, the Board filed a Motion to Dismiss and/or to Enforce Settlement, essentially contending that B.P.’s mother

“freely and knowingly” entered into the withdrawal agreement and, in so doing, petitioner “waived [her son’s] entitlement to a free public education.” (Board’s Motion to Dismiss or to Enforce Settlement at 3) Therefore, the Board will not readmit B.P.

The Deputy Commissioner considers petitioner’s appeal for reinstatement within the framework of B.P.’s unambiguous statutory and constitutional entitlement to a free education (*N.J.S.A.* 18A:38-1 *et seq.*; New Jersey Constitution, Article VIII, Sec. IV, para.1) and finds that as long as B.P. currently meets admission requirements, *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:28-2.4, he is *legally entitled* to attend school in the Board’s District. To the extent the Board disputes this entitlement based on the existence of a withdrawal agreement signed by the parties, the Deputy Commissioner declines to rule on the enforceability of that agreement, inasmuch as the Commissioner generally lacks subject matter jurisdiction to resolve disputes over the interpretation and enforcement of contracts where such interpretation is primary to the issue at hand. *See, Board of Education of the Township of Cherry Hill, Camden County v. Board of Education of the Borough of Haddonfield, Camden County*, Commissioner Decision September 23, 1996; *Belleville Education Association v. Belleville Board of Education*, 209 *N.J.Super.* 93, 98 (App. Div. 1986).¹

Accordingly, based on his statutory and constitutional entitlement, the Board is directed to readmit B.P. and to make immediate arrangements to assess his educational needs and identify an appropriate educational program for him.² If the Board maintains that the within withdrawal agreement is binding and, it should not, therefore, be required to educate B.P., then it

¹ Notwithstanding this finding, the Deputy Commissioner expresses serious reservation about the enforceability of an agreement wherein a party waives a student’s statutory and constitutional right to a free education. *See, e.g., Spiewak v. Rutherford Bd. of Ed.*, 90 *N.J.* 63 (1982), wherein the Supreme Court found that “tenure is a legal right governed by statute rather than contract,” and as such tenure rights “may not be waived or bargained away.” (*Id.* at 76)

² The record indicates that B.P. was evaluated by the Board’s Child Study Team which determined that B.P. was not eligible for special education or related services. (Board’s Notice of Motion to Dismiss in Lieu of Answer and/or to Enforce Settlement, Certification of Patricia Rudder at 2, para. 3)

may seek enforcement of that agreement in the appropriate forum, *while continuing to provide an appropriate educational program for B.P.* Should the Board wish to activate the disciplinary proceedings which were apparently preempted by the within agreement, the Deputy Commissioner cautions that it must take action in accordance with *P.H. and P.H., on behalf of minor child, M.C. v. Board of Education of the Borough of Bergenfield, Bergen County, David Hespe, Commissioner, and New Jersey State Board of Education*, State Board decision, July 2, 2002.

IT IS SO ORDERED.³

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2002

Date of Mailing: October 8, 2002

³ This decision, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.